

Amendment and Response

Applicant: Mary K. Toth et al.

Serial No.: 09/483,039

Filed: January 18, 2000

Docket No.: GMI5212USA (G180.122.101)

Title: ATTACHABLE SNACK FOOD CONTAINER

REMARKS

This is responsive to the Office Action mailed February 14, 2001. In that Office Action, claims 1-42 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-5, 16, 17, 19-23, 34, 35, 38, 39, and 42 were rejected under 35 U.S.C. §102(e) as being anticipated by Privert, U.S. Patent No. 5,922,376 ("Privert"). Claims 1-5, 7-11, 16, 20-23, 25-29, 34, and 38-39 were rejected under 35 U.S.C. §102(b) as being anticipated by Paulin, U.S. Patent No. 5,085,330 ("Paulin") and/or Cadigan, U.S. Patent No. 1,064,442 ("Cadigan"). Claims 6 and 24 were rejected under 35 U.S.C. §103(a) as being unpatentable over Paulin and Cadigan. Finally, claims 12-15, 17, 30-33, 35, 37, and 40-42 were rejected under 35 U.S.C. §103(a) as being unpatentable over Paulin and Cadigan in view of Brauner et al., U.S. Patent No. 5,318,787 ("Brauner"). With this response, claims 1, 4, 7, 19, 22, 25, 38, and 39 have been amended. It is believed that all claims are now in a condition for allowance.

Rejections under 35 U.S.C. §112, Second Paragraph

Claims 1-42 were rejected under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Claims 4, 7, 19, 22, 25, and 39 all contained the term "substantially" which was rejected as being a relative and indefinite term that is not defined by the claim. Claims 7, 19, and 25 have all been amended to delete the term "substantially". With respect to claims 4, 22, and 39, it is respectfully submitted that reference to a "substantially annular" inner surface is clarified by the specification. In particular, at page 7, lines 5-21, it is described that the inner surface 32 can define an arc length of ~~180°~~ 360°, such that one of ordinary skill is reasonably apprised of the scope of "substantially annular". Each of claims 8, 20-37, and 39-42 depends from one or more of the amended claims 4, 7, 19, 22, 25, and 39. Since the amended claims are no longer indefinite, neither are claims 8, 20-37, and 39-42. Claims 1-3, 5, 6, and 9-18, however, do not include the indefinite term "substantially" or any other indefinite terms, and consequently, they are allowable in their present form. As a result, it is respectfully requested that the rejection of claims 1-42 under 35 U.S.C. §112, second paragraph, be withdrawn.

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Rejections under 35 U.S.C. §§102 and 103

Claim 1 was rejected under 35 U.S.C. § 102(e) as being anticipated by Privert and under 35 U.S.C. §102(b) as being anticipated by Paulin and Cadigan. Amended claim 1 relates to a snack food container including a side wall, a bottom wall, and a flange body. The side wall forms an upper opening and connects to the bottom wall opposite the upper opening. The flange body extends from the bottom wall to form an inner and an outer surface; the inner surface is configured to be selectively attached to a beverage container and is characterized by the absence of threads. The snack food container is configured to form an upright internal storage region capable of containing a snack food product apart from the inner surface of the flange. Thus, when assembled to a beverage container, the snack food product is separately maintained. None of the cited references teach or otherwise suggest such limitations.

For example, Privert relates to a compartmentalized food and beverage tray. The Examiner has identified Privert as including a side wall 40, bottom wall 13, and flange body 28. These components do not suggest several of the limitations of amended claim 1. The identified element 28 of Privert is a film, and not a flange. It is noted that Privert identifies element 36 as a peripheral flange. However, this flange body 36 of Privert does not extend from the bottom wall 13 as in amended claim 1; rather, the flange body 36 extends from the side wall 40. The flange body 36 of Privert also fails to define an inner surface for selective attachment to a beverage container as required by amended claim 1. Furthermore, Privert does not teach or otherwise suggest the flange 36 being configured to contact the beverage container in any manner whatsoever. Privert designates the compartment 43 for maintaining a beverage 24. The flange 36 is not attached to the beverage container 24 at the compartment 43; instead, the beverage container 24 appears to simply rest on a bottom wall. Regardless, Privert does not reach or suggest a flange body configured for an attachment to a beverage container apart from a snack food storage region. For example, the recess or keel 44 is provided to stabilize the container 10 when placed on a countertop. Thus, the recess 44 is not configured for attachment to a beverage container. Even if it were, the recess 44 is still "open" relative to the food compartment 13, in

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direct contrast to the limitations of amended claim 1. Consequently, Privert cannot be said to teach or otherwise suggest the limitations of amended claim 1.

Paulin is similarly lacking. Paulin relates to a drinking apparatus that provides separate storage for ice cream and a carbonated beverage while still allowing the two substances to selectively mix when utilized for drinking. This apparatus includes a bottle attachment housing 12 that includes a housing side wall 38 forming an upper opening, a barrier 30 similar to a bottom wall, and a flange 28. The flange 28 is internally threaded for mounting to a correspondingly threaded bottle 14. Thus, the bottle attachment 12 is limited to only one specific type of bottle 14 that has matching threads. Further, the threaded interaction limits the position of the spout 48 relative to the exterior of the bottle 14 when fully tightened. The invention of amended claim 1 overcomes these disadvantages by providing non-threaded attachment. Furthermore, Paulin does not teach or otherwise allow the ice cream snack or the beverage to be accessed on an individual basis for consumption. Paulin only allows access for consumption through the spout 48. Use of the spout requires both the ice cream snack and the beverage to be accessed simultaneously. Conversely, amended claim 1 allows the snack to be accessed from the upper opening and the beverage to be accessed by another route by forming the internal storage region apart from the attachment mechanism provided by the inner surface of the flange. Paulin also allows the snack, such as the ice cream described, to mix with the beverage through a plurality of apertures 32 if the snack has any liquid content. This type of mixing further prevents access to the snack or beverage on a separate basis. As a result, amended claim 1 is neither taught nor otherwise suggested by Paulin.

Similarly, Cadigan fails to teach or suggest several of the limitations of amended claim 1. The Examiner has referenced Cadigan as having a top container a^2 connectible to a separate bottom container a^3 by a clasp C. The clasp C is separate from, and threadably engaged to, the containers a^2 , a^3 . The threaded engagement to the bottom container a^3 is provided by threads c^8 that extend radially outwardly. Thus, the top container a^2 can only be assembled to a single type of container a^3 , otherwise having threads matching those provided by the clasp C. The invention of amended claim 1 overcomes this distinct disadvantage by configuring the inner surface for attachment to a separate container without threads. Thus, the invention of claim 1 can be applied

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to a wide variety of different containers, including "standard" 12-ounce beverage containers (e.g., soda pop, juice, water, etc.), and is not taught or otherwise suggested by Cadigan.

For at least the aforementioned reasons, the limitations of amended claim 1 are neither taught nor otherwise suggested by any of the cited references. As a result, amended claim 1 is now in a condition for allowance.

Claims 2-5, 7-11, and 16 were rejected under 35 U.S.C. § 102(e) and/or §102(b) as being anticipated by either Paulin and/or Cadigan. Each of claims 2-5, 7-11, and 16 depend from amended claim 1. As previously described amended claim 1 was not taught or otherwise suggested by any of the cited references. Accordingly, claims 2-5, 7-11, and 16 are also allowable.

In addition, with respect to claims 9-11, it is respectfully submitted that the threads of Cadigan and Paulin cannot satisfy the respective retention tab claim limitations. Viewed in the context of claim 1 whereby the inner surface does not have threads, the claimed retention tabs cannot be threads. This inventive construction allows assembly of the container to a wide variety of different beverage containers available on the market. In contrast, the threaded configuration of Cadigan and Paulin undesirably limits the compatibility of the snack food container to only a specific, generally unavailable beverage container having corresponding threads. Thus, claims 9-11 recite further, patentably distinct subject matter.

Claim 6 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Paulin or Cadigan. Claim 6 depends from amended claim 1. As previously described, amended claim 1 was not taught or otherwise suggested by any of the cited references. Consequently, claim 6 is also allowable.

Claims 12-15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Paulin and Cadigan in view of Brauner. Claims 12-15 each depend from amended claim 1. As previously described, amended claim 1 was not taught or otherwise suggested by Paulin or Cadigan. As a result, the limitations of 12-15 are also not taught or otherwise suggested by Paulin or Cadigan. In addition to the elements set forth in amended claim 1, claims 12-15 include a slot in the snack food container extending from the side wall to the bottom wall, so as to allow access to an area below the bottom wall from the exterior of the side wall. This is not

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taught or otherwise suggested by Brauner or any other cited reference. For example, a requisite suggestion to combine Brauner with Paulin or Cadigan has not been identified and does not exist. *In re Vaeck*, 20 USPQ2d 1438 (Fed. Cir. 1991); *MPEP* §2142.

In particular, Brauner refers to a package 20 for food configured to be mounted around a central orifice 25 of a bottle or jug 12. The package 20 includes a notch 62 sized for placement over a handle 18 of the milk jug 12. The notch 62 is provided to prevent rotation of the package 20 relative to the jug 12. (Brauner, column 5, lines 33-37). In direct contrast, the threaded engagement of Cadigan and Paulin requires that the package rotate relative to the bottle to which the package is assembled. As such, because Cadigan and Paulin teach away from being combined with Brauner, a requisite suggestion to combine does not exist. Further, Cadigan and Paulin cannot include the claimed slot, as to do so would impede the specifically designed threaded engagement with the separate beverage container, rendering Cadigan or Paulin unsatisfactory for its intended purpose. Again, this necessitates that there is no suggestion to modify Cadigan or Paulin as advanced by the Examiner. *In re Gordon*, 221 USPQ 1125 (Fed. Cir. 1984). For the above reasons, then, claims 12-15 are allowable.

Claim 17 was rejected under 35 U.S.C. §102(e) as being anticipated by Privert and under 35 U.S.C. §103(a) as being unpatentable over Paulin and Cadigan in view of Brauner. Claim 17 depends from amended claim 1. As previously described, amended claim 1 was not taught or otherwise suggested by any of the cited references. As a result, claim 17 is similarly allowable.

Claim 18 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Paulin and Cadigan in view of Harvey. Claim 18 depends from amended claim 1. As previously described, amended claim 1 was not taught or otherwise suggested by Paulin or Cadigan, and as a result, claim 18 is not taught or otherwise suggested by Paulin or Cadigan. Claim 18 further requires a straw to be associated with the side wall of the snack container described in amended claim 1. Harvey does not teach or otherwise suggest such a limitation.

For example, Harvey relates to a mouthpiece 1 coated with a substance called miraculin derived from a fruit, or *Synsepalum dulcificum*, attached to a straw 2. The configuration of Harvey, allows a liquid to be drawn up the straw, through the coated mouthpiece and into the user's mouth. Harvey was designed for the limited purpose of modifying taste receptors to

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render sour tasting liquids sweet through use of the miraculin (col. 1, lines 2-3). It does not allow or suggest the use of any other possible snacks, and focuses on the taste modifying capabilities rather than the snack containment configuration. Therefore, Harvey is not analogous art, and it cannot be used in conjunction with 35 U.S.C. §103(a) against the application at issue. Furthermore, the straw 2 of Harvey is not removably associated with the side wall, in direct contrast to the requirement of amended claim 18. Consequently, amended claim 18 is further distinguished over the cited references.

Claim 19 was rejected under 35 U.S.C. §102(e) as being anticipated by Privert. Claim 19 has been amended similar to claim 1. For the reasons described above with respect to amended claim 1, amended claim 19 is not taught or suggested by any of the cited references, including Privert, Cadigan, and Paulin.

Claims 20-23, 25-29, and 34 were rejected under 35 U.S.C. § 102(e) as being anticipated by Privert and under 35 U.S.C. § 102(b) as being anticipated by Paulin and Cadigan. Each of claims 20-23, 25-29, and 34 depends from amended claim 19. As previously described, Privert does not teach or otherwise suggest the limitations of claim 19, and as a result, Privert does not teach or otherwise suggest the limitations of claims amended claim 19, and thus of 20-23, 25-29, and 34. Paulin and Cadigan similarly fail teach or suggest the limitations of claims 20-23, 25-29, and 34. Also, for the reasons described above relating to claims 9-11, claims 27-29 are further patentably distinct.

Claim 24 was rejected under 35 U.S.C. §103(a) as being unpatentable over Paulin or Cadigan. Claim 24 depends from claim 23 that is not taught or otherwise suggested by any of the cited references. Accordingly, claim 24 is similarly allowable.

Claims 30-33 were rejected under 35 U.S.C. §103(a) as being unpatentable over Paulin and Cadigan in view of Brauner. Claims 30-33 depend from claim 19. As previously described, amended claim 19 is not taught or otherwise suggested by any of the cited references. Thus, claims 30-33 are similarly allowable. Further, for the reasons described with respect to claims 12-15, claims 30-33 recite additional, patentably distinct subject matter.

Claims 34, 35, and 37 were rejected under 35 U.S.C. §102(e) as being anticipated by Privert and/or under 35 U.S.C. §103(a) as being unpatentable over Paulin and Cadigan in view of

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Brauner. Claims 34, 35, and 37 depend from amended claim 19. As previously described, amended claim 19 is not taught or otherwise suggested by any of the cited references. As a result, claim 34, 35, and 37 are similarly allowable.

Claim 36 was rejected under 35 U.S.C. §103(a) as being unpatentable over Paulin or Cadigan in view of Harvey. Claim 36 depends from amended claim 19. As previously described, amended claim 19 is not taught or otherwise suggested by the cited references; and for the same reasons discussed with respect to amended claim 18, amended claim 36 is further distinguished over the cited references.

Claim 38 was rejected under 35 U.S.C. §102(e) as being anticipated by Privert and under 35 U.S.C. §102(b) as being anticipated by Paulin and Cadigan. Amended claim 38 relates to a snack food container including a side wall forming an upper opening and connecting to a bottom wall opposite the upper opening. A flange body extends downwardly from the bottom wall and is associated with a retaining means for selective attachment to a separate beverage container. The retaining means is characterized by the absence of threads. Furthermore, the side wall, the bottom wall, the flange body, and the retaining means are integrally formed, and form an internal storage region apart from the retaining means. For the reasons provided above with respect to amended claim 1, none of the cited references teach or otherwise suggest such limitations. As such, amended claim 38 is allowable.

Claims 39 and 42 were rejected under 35 U.S.C. §102(e) and/or 35 U.S.C. §102(b) as being anticipated by Privert and/or Paulin and Cadigan. Claims 39 and 42 both depend from amended claim 38. As previously described, amended claim 38 is not taught or otherwise suggested by any of the cited references. As a result, claims 39 and 42 are also allowable.

Claims 40-42 were rejected under 35 U.S.C. §103(a) as being unpatentable over Paulin and Cadigan in view of Brauner. Claims 40-42 each depend from amended claim 38. As previously described, amended claim 38 is not taught or otherwise suggested by any of the cited references. Consequently, claims 40-42 are also allowable. Further, pursuant to the arguments provided above relating to claims 12-15, claims 40 and 41 recite additional, patentably distinct subject matter.

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CONCLUSION

It is believed that all claims are now in a condition for allowance. Notice to that effect is respectfully requested.

No fees are required under 37 C.F.R. 1.16(b)(c). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 500471.

Attached hereto is a marked-up version of the changes made to the specification and/or the claims by the current Amendment. The attached pages are captioned "**VERSION WITH MARKINGS TO SHOW CHANGES MADE**".

The Examiner is invited to contact the Applicants' Representative at the below-listed telephone number if there are any questions regarding this response.

Respectfully submitted,

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JUNE 14, 2001

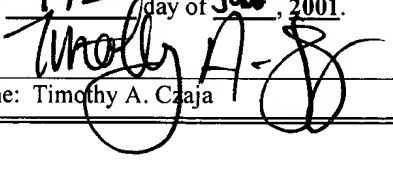
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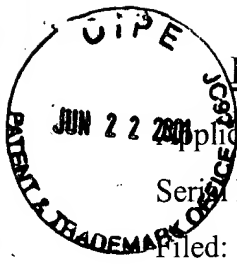

Timothy A. Czaja

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CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope address to: Assistant Commissioner for Patents, Washington, D.C., 20231 on this 14th day of June, 2001.

By


Name: Timothy A. Czaja



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Mary K. Toth et al.

Examiner: Hao T. Mai

Serial No.: 09/483,039

Group Art Unit: 1761

Filed: January 18, 2000

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Attach
to #
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AMENDMENT AND RESPONSE

Assistant Commissioner for Patents
Washington, D.C. 20231

**VERSION WITH MARKINGS
TO SHOW CHANGES MADE**

Dear Sir/Madam:

This Amendment is responsive to the Office Action mailed February 14, 2001. Please amend the above-identified patent application as follows:

IN THE CLAIMS

Please amend claims 1, 7, 18, 19, 25, 36, 38, and 39 as follows:

1.(Amended) A snack food container comprising:

a side wall forming an upper opening;

a bottom wall connected to the side wall opposite the upper opening; and

a flange body extending downwardly from the bottom wall, the flange body defining an inner surface and an outer surface, the inner surface being configured for selective attachment to a beverage container and characterized by the absence of threads;

wherein the snack food container defines an internal storage region for containing a snack food product, the internal storage region being formed apart from the inner surface of the flange body.

2. The snack food container of claim 1, wherein the inner surface of the flange body is sized in accordance with a top portion of an available beverage container having a predetermined outer dimension.

3. The snack food container of claim 2, wherein the available beverage container is cylindrical such that the predetermined outer dimension is a diameter.

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4. The snack food container of claim 3, wherein the inner surface is substantially annular.
5. The snack food container of claim 3, wherein the inner surface includes a receiving section for interfacing with a top portion of the beverage container, the receiving section defining a diameter slightly greater than a diameter of the top portion of the separate beverage container.
6. The snack food container of claim 5, wherein the receiving section defines a diameter in the range of approximately 52-55 mm.
- 7.(Amended) The snack food container of claim 1, wherein the inner surface includes a first section adjacent the bottom wall and a second section extending from the first section, the first section being substantially-vertical.
8. The snack food container of claim 7, wherein the second section expands outwardly from the first section for guiding the snack food container onto a beverage container.
9. The snack food container of claim 1, wherein the flange body further comprises:
at least one retention tab extending in a generally radial fashion from the inner surface,
the at least one retention tab being axially spaced from the bottom wall.
10. The snack food container of claim 9, wherein the at least one retention tab is configured to selectively engage a separate beverage container.
11. The snack food container of claim 9, further comprising:
a plurality of retention tabs circumferentially spaced along the inner surface.

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12. The snack food container of claim 1, wherein the snack food container forms a slot extending from the side wall to the bottom wall such that an area below the bottom wall is accessible from an exterior of the side wall via the slot.
13. The snack food container of claim 12, wherein the slot is sized to allow passage of a straw.
14. The snack food container of claim 12, wherein the slot extends in an angular fashion from the bottom wall to the side wall.
15. The snack food container of claim 12, wherein the slot extends through the flange body.
16. The snack food container of claim 1, wherein the side wall, the bottom wall and the flange body are integrally formed.
17. The snack food container of claim 1, further comprising:
a protective film secured across the upper opening.
- 18.(Amended) The snack food container of claim 1, further comprising:
a straw removably associated with the side wall.
- 19.(Amended) A packaged good article comprising:
a snack food container comprising:
a side wall forming an upper opening,
a bottom wall connected to the side wall opposite the upper opening,
a flange body extending downwardly from the bottom wall, the flange body
defining an inner surface and an outer surface, the inner surface being
substantially-configured for selective attachment to a separate beverage
container and characterized by the absence of threads,

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wherein the snack food container defines an internal storage region; and
a snack food product contained within the internal storage region apart from the inner
surface of the flange body.

20. The packaged good article of claim 19, wherein the inner surface of the flange body is sized in accordance with a top portion of an available beverage container having a predetermined outer dimension.

21. The packaged good article of claim 20, wherein the available beverage container is cylindrical such that the predetermined outer dimension is a diameter.

22. The packaged good article of claim 21, wherein the inner surface is substantially annular.

23. The packaged good article of claim 19, wherein the inner surface includes a receiving section for interfacing with a top portion of the beverage container, the receiving section defining a diameter slightly greater than a diameter of the top portion of a separate beverage container.

24. The packaged good article of claim 23, wherein the receiving section defines a diameter in the range of approximately 52-55 mm.

25.(Amended) The packaged good article of claim 19, wherein the inner surface includes a first section, adjacent the bottom wall and a second section extending from the first section, the first section being ~~substantially~~ vertical.

26. The packaged good article of claim 24, wherein the second section expands outwardly from the first section for guiding the snack food container onto a beverage container.

27. The packaged good article of claim 19, wherein the flange body further comprises:

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at least one retention tab extending in a generally radial fashion from the inner surface,
the at least one retention tab being axially spaced from the bottom wall.

28. The packaged good article of claim 27, wherein the at least one retention tab is configured to selectively engage the separate beverage container.
29. The packaged good article of claim 27, further comprising:
a plurality of retention tabs circumferentially spaced along the inner surface.
30. The packaged good article of claim 19, wherein the snack food container forms a slot extending from the side wall to the bottom wall such that an area below the bottom wall is accessible from an exterior of the side wall via the slot.
31. The packaged good article of claim 30, wherein the slot is sized to allow passage of a straw.
32. The packaged good article of claim 30, wherein the slot extends in an angular fashion from the bottom wall to the side wall.
33. The packaged good article of claim 30, wherein the slot extends through the flange body.
34. The packaged good article of claim 19, wherein the side wall, the bottom wall and the flange body are integrally formed.
35. The packaged good article of claim 19, further comprising:
a protective film secured across the upper opening.
- 36.(Amended) The packaged good article of claim 19, further comprising:
a straw removably associated with the side wall.

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37. The packaged good article of claim 19, wherein the snack food product includes a plurality of dried food items.

38.(Amended) A snack food container comprising:

a side wall forming an upper opening;

a bottom wall connected to the side wall opposite the upper opening;

a flange body extending downwardly from the bottom wall; and

retaining means associated with the flange body for selectively attaching the snack food

container to a separate beverage container, the retaining means characterized by the absence of threads;

wherein the side wall, the bottom wall, the flange body and the retaining means are

integrally formed, and form an internal storage region for containing a snack food product apart from the retaining means.

39.(Amended) The snack food container of claim 38, wherein the retaining means includes ~~an~~ a substantially annular surface formed by the flange body, the substantially annular surface having a diameter approximating a diameter of an available cylindrical beverage container.

40. The snack food container of claim 38, further comprising:

a slot extending from the side wall to the bottom wall for providing access to an area

below the bottom wall from an exterior of the side wall.

41. The snack food container of claim 40, wherein the slot extends through the flange body.

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42. The snack food container of claim 38, further comprising:
a protective film sealed across the upper opening.